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8 Attorneys for Plaintiff  
9 NEW MOTION, INC. d/b/a ATRINSIC MEDIA

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 NEW MOTION, INC. (d/b/a ATRINSIC  
13 MEDIA), a Delaware corporation,

14 Plaintiff,

15 v.

16 SMS.AC, INC. (d/b/a FanBox), a  
17 California Corporation, BRANDIE  
18 SMITH, an individual, MICHAEL  
19 POUSTI, an Individual, and DOES 1  
20 through 50, inclusive,

21 Defendants.

Case No. 09cv99-WQH (BLM)

**STIPULATION FOR DISMISSAL  
WITH PREJUDICE AND REQUEST  
FOR COURT TO RETAIN  
JURISDICTION FOR PURPOSES OF  
SETTLEMENT**

22 Plaintiff NEW MOTION, INC. d/b/a ATRINSIC MEDIA ("New Motion") and  
23 defendants SMS.AC, INC. d/b/a FANBOX ("SMS"), BRANDIE SMITH ("Smith") and  
24 MICHAEL POUSTI ("Pousti") hereby agree and stipulate as follows:

25 1. The parties have settled the above-captioned matter and entered into a  
26 settlement agreement ("Settlement Agreement").

27 2. Pursuant to the Settlement Agreement, New Motion hereby requests that  
28 this Court dismiss this action with prejudice subject to the terms of this Stipulation.

3. Pursuant to the Settlement Agreement, SMS is to make payments to New  
Motion under a specific timetable, with the last payment to be made by SMS on or before  
September 15, 2010.

1           4. Pursuant to the Settlement Agreement, in the event SMS fails to make said  
2 payments, and fails to cure such default, as called for in the Settlement Agreement, New  
3 Motion has the right to file a Stipulation for Entry of Judgment, attached as Exhibit A to  
4 the Settlement Agreement.

5           5. The parties hereto request that this Court retain jurisdiction over this action  
6 for the purpose of enforcing the Settlement Agreement through and including October 15,  
7 2010.

8 DATED: July \_\_, 2009

GENGA & ASSOCIATES, P.C.

9  
10 By: \_\_\_\_\_

11 Nicole Krasny Asch  
12 Attorneys for Plaintiff NEW MOTION, INC.  
13 d/b/a ATRINSIC MEDIA

14  
15 DATED: July \_\_, 2009

NAVIGATO & BATTIN, LLP.

16  
17 By: \_\_\_\_\_

18 Michael W. Battin  
19 Attorneys for Defendants SMS.AC, INC. d/b/a  
20 FANBOX, BRANDIE SMITH and MICHAEL  
POUSTI

21 **IT IS HEREBY ORDERED:**

- 22 1. This action is dismissed with prejudice.  
23 2. The Court shall retain jurisdiction over this action for the purpose of  
24 enforcing the Settlement Agreement through and including October 15, 2010.  
25

26 DATED: \_\_\_\_\_

27 The Honorable Barbara L. Major  
28 United States Magistrate Judge

1 4. Pursuant to the Settlement Agreement, in the event SMS fails to make said  
2 payments, and fails to cure such default, as called for in the Settlement Agreement, New  
3 Motion has the right to file a Stipulation for Entry of Judgment, attached as Exhibit A to  
4 the Settlement Agreement.

5 5. The parties hereto request that this Court retain jurisdiction over this action  
6 for the purpose of enforcing the Settlement Agreement through and including October 15,  
7 2010.

8 DATED: July 9, 2009

GERGA & ASSOCIATES, P.C.

9  
10 By: Nicole Krasny Asch

11 Nicole Krasny Asch  
12 Attorneys for Plaintiff NEW MOTION, INC.  
13 d/b/a ATRINSIC MEDIA

14  
15 DATED: July 13, 2009

NAVIGATO & BATTIN, LLP.

16  
17 By: Michael W. Battin

18 Michael W. Battin  
19 Attorneys for Defendants SMS, AC, INC. d/b/a  
20 FANBOX, BRANDIE SMITH and MICHAEL  
POUSTI

21 **IT IS HEREBY ORDERED:**

- 22 1. This action is dismissed with prejudice.  
23 2. The Court shall retain jurisdiction over this action for the purpose of  
24 enforcing the Settlement Agreement through and including October 15, 2010.  
25

26 DATED: \_\_\_\_\_

27 The Honorable Barbara L. Major  
United States Magistrate Judge

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STIPULATION RE DISMISSAL AND REQUEST FOR CONTINUING JURISDICTION